

Note No: 46

Her Britannic Majesty's Embassy presents its compliments to the Department of State and has the honour to refer to discussions between officials of the Governments of the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the Troika) and the Government of the United States of America (the four Governments hereinafter referred to as the Parties) concerning cooperation between the Troika and the Government of the United States of America on the application of non-proliferation assurances to low enriched uranium transferred from the Troika countries to the United States for fabrication into fuel and retransfer to Taiwan for use in Taiwan's light water nuclear reactor programmes. Pursuant to these discussions, the Government of the United Kingdom proposes that the terms and conditions set forth in the Annex to this Note shall govern that cooperation.

The Government of the United Kingdom has the further honour to propose that this Note, including its Annex, and the Department of State's reply confirming that the foregoing is acceptable to the Government of the United States of America, together with the equivalent exchanges of Notes between the Governments of the Federal Republic of Germany and the Kingdom of the Netherlands on the one hand and the Government of the United States of America on the other, shall constitute an Agreement among the parties, which shall enter into force on the first day of the second month following the date on which the last of the Troika countries has informed the Department of State that the national requirements for the entry into force of the Agreement have been fulfilled and which shall remain in force indefinitely, unless terminated by any Party upon six month's written notice to the other Parties.

The British Embassy avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

BRITISH EMBASSY

Washington

21 July 1999



ANNEX

Recognising that the Governments of the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the Troika) and the Government of the United States of America (hereinafter referred to as the United States) have a common desire to ensure that low enriched uranium transferred to Taiwan for use in peaceful nuclear activities and any special nuclear material produced therefrom is not used to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices;

Recognising that the Troika seeks to ensure that low enriched uranium produced *in the Troika countries and special nuclear material produced therefrom is subject in* Taiwan to nuclear non-proliferation assurances consistent with the non-proliferation policies of the Troika;

Recognising that low enriched uranium transferred from the Troika countries to the territory of the United States for fabrication into fuel and retransfer to Taiwan will be subject to the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy *Between the United States of America and the European Atomic Energy Community* signed at Brussels on November 7, 1995 and March 29, 1996 and which entered into force on April 12, 1996 (hereinafter referred to as the "US-EURATOM Agreement"), while it is in the United States of America;

Recognising that under Article 8.1. (C) (i) of the US-EURATOM Agreement retransfers of low enriched uranium to third parties may be undertaken when carried out according to procedures set out in the Agreed Minute thereto, including consideration, on a case-by-case basis, for nuclear fuel cycle activities other than the production of high enriched uranium;



In order for the Troika to make low enriched uranium available to Taiwan for use in light water nuclear reactor programmes in Taiwan:

1. Prior to the transfer of low enriched uranium from the Troika countries to the United States for retransfer to Taiwan, the Troika shall collaborate with EURATOM in order to notify the United States that such low enriched uranium is intended for fabrication into fuel and retransfer to Taiwan for use in light water nuclear reactors in Taiwan.

Low enriched uranium that has been the subject of this notification and has been retransferred from the territory of the United States to Taiwan is referred to in this Agreement as "Troika uranium".

2. "Troika uranium" will consist of low enriched uranium as defined in Article 21.7 of the US-EURATOM Agreement.

3. At the time of transfer of low enriched uranium from the Troika countries to the territory of the United States for retransfer to Taiwan, the Troika shall collaborate with EURATOM in accordance with paragraph 4 of the Agreed Minute to the US-EURATOM Agreement, in order to obtain approval for the retransfer of the low enriched uranium from the territory of the United States to Taiwan.

4. The United States shall ensure that "Troika uranium" and special nuclear material produced therefrom are, while in Taiwan, subject to all provisions of the Agreement for Cooperation Between the United States of America and the Republic of China Concerning Civil Uses of Atomic Energy, signed April 4, 1972, as amended and extended (hereinafter referred to as the 1972 Agreement), while the 1972 Agreement is in



force or, in the event that the 1972 Agreement is replaced, to the provisions of any succeeding agreement while such succeeding agreement is in force. The United States shall consult with inter alia the Troika about the amendment, replacement, suspension or termination of the 1972 Agreement or of any succeeding agreement.

5. Except as provided in paragraph 9, the United States shall ensure that "Troika uranium" and special nuclear material produced therefrom are, while in Taiwan, subject to the Safeguards Transfer Agreement, signed December 6, 1971, under which the International Atomic Energy Agency applies safeguards in Taiwan (reproduced in International Atomic Energy Agency document INFCIRC/158 of March 8, 1972 and hereinafter referred to as the Safeguards Agreement), while the Safeguards Agreement is in force or, in the event that the Safeguards Agreement is replaced, to the provisions of any succeeding agreement while such succeeding agreement is in force. The United States shall consult with inter alia the Troika about the amendment, replacement, suspension or termination of the Safeguards Agreement or of any succeeding agreement.

6. For each transfer of "Troika uranium" notified pursuant to paragraph 1, from the territory of the United States to Taiwan, the United States shall, through appropriate channels, identify such uranium to Taiwan as "Troika uranium".

7. The United States shall approve the retransfer from Taiwan of "Troika uranium" or special nuclear material produced therefrom only to EURATOM or to any third party that has been identified by EURATOM in accordance with Article 8.1(C) of the US-EURATOM Agreement and paragraph 4 of the Agreed Minute to the US-EURATOM Agreement as acceptable under the US-EURATOM Agreement. This commitment applies only when the United States has been advised that "Troika uranium" or special nuclear material produced therefrom is involved.

8. In the event that the consent of the United States is sought for the reprocessing, or enrichment to twenty percent or greater in the isotope U-235 of "Troika uranium" or special nuclear material produced therefrom, in Taiwan, the United States

shall consult the Troika inter alia with a view to reaching agreement prior to exercising any rights it has to approve enrichment or reprocessing. This commitment applies only when the United States has been advised that "Troika uranium" or special nuclear material produced therefrom is involved.

9. If for any reason or at any time, the international Atomic Energy Agency is not applying safeguards pursuant to the Safeguards Agreement, or (in the event that such Agreement is replaced) pursuant to the provisions of any succeeding agreement, the United States shall consult the Troika inter alia to reach agreement on the application of fallback safeguards to "Troika uranium" and special nuclear material produced therefrom. Fallback safeguards may include the invocation by the United States of its existing rights under the 1972 Agreement with a view to ensuring that the safeguards provided for in the 1972 Agreement are applied to "Troika uranium" or special nuclear material produced therefrom.

10. If the United States, after consultation with the Troika, exercises its rights under the 1972 Agreement to require the return from Taiwan of material subject to that Agreement, "Troika uranium" or special nuclear material produced therefrom that is returned to the United States shall become subject to the US-EURATOM Agreement.

11. In the event that the United States finds it necessary to exercise its rights to apply fallback safeguards, in accordance with paragraph 9, or to exercise its right of return, in accordance with paragraph 10, the Troika shall ensure that all necessary steps are taken to require URENCO to share with the United States the cost of implementing these rights as they apply to "Troika uranium" or special nuclear material produced therefrom on a proportionate basis based on the relative value of the enrichment and fabrication components of the nuclear fuel supplied.

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12. The United States shall maintain an inventory of "Troika uranium" in Taiwan, and based on information received through appropriate channels from Taiwan, of special nuclear material in Taiwan produced therefrom. The United States shall provide this inventory to the Troika annually.

13. The United States shall, to the extent permitted by United States law, consult the Troika *inter alia* if it has reason to believe:

- i. that the United States has not been advised that a request for consent to retransfer from Taiwan, to reprocess in Taiwan, or to enrich to twenty percent or more in the isotope U-235 in Taiwan, "Troika uranium" or special nuclear material in Taiwan produced therefrom, actually involves "Troika uranium" or special nuclear material produced therefrom, or
- ii. that "Troika uranium" or special nuclear material produced therefrom is not being identified as from the Troika while in Taiwan.

In the case of (i) or (ii), the United States and the Troika shall seek to reach an agreement on measures that the United States and/or the Troika will take to rectify the problem.

14. The Troika and the United States shall consult at any time at the request of any Party to ensure the effective implementation of this Agreement. Such consultations may take the form of an exchange of correspondence.



15. The Troika and the United States shall seek to resolve any dispute concerning the interpretation or application of this Agreement by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, or other peaceful means as they may mutually agree.

16. The United States confirms that in accordance with an October 26, 1978 letter of assurance from the "Embassy of the Republic of China" to the United States Department of Energy, "Troika uranium" and special fissionable material produced therefrom shall be subject to measures of physical protection in accordance with the criteria set out in Annex C of the Guidelines for Nuclear Transfers as promulgated by the International Atomic Energy Agency in the Appendix to INFCIRC/254/Rev.3, Part 1.

The Troika and the United States shall consult at the request of either concerning matters relating to physical protection, including the application, for the purposes of the preceding paragraph, of the recommendations that may be made from time to time by international expert groups.

17. Notwithstanding the suspension or termination of this Agreement, paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 shall remain in force:

- (i) while any source material or special nuclear material subject to these provisions is in Taiwan, or
- (ii) until such time as the Troika and the United States agree that source material or special nuclear material subject to these provisions is no longer usable for any nuclear activity relevant from the point of view of safeguards.

BRITISH EMBASSY
Washington
21 July 1999



The Department of State refers to Her Britannic Majesty's Embassy's Note dated July 21, 1999 concerning cooperation between the Governments of the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the Troika) and the Government of the United States of America (the four Governments hereinafter referred to as the Parties) concerning cooperation between the Troika and the Government of the United States of America on the application of non-proliferation assurances to low enriched uranium transferred from the Troika countries to the United States for fabrication into fuel and retransfer to Taiwan for use in Taiwan's light water nuclear reactor programs. The Government of the United Kingdom proposed that the terms and conditions set forth in the Annex to that Note shall govern that cooperation.

The Department of State confirms that the Government of the United Kingdom's proposal is acceptable to the Government of the United States of America and that the Embassy's Note, including its

Annex, and this reply, together with the equivalent exchanges of Notes between the Governments of the Federal Republic of Germany and the Kingdom of the Netherlands on the one hand and the Government of the United States of America on the other, shall constitute an Agreement among the Parties, which shall enter into force on the first day of the second month following the date on which the last of the Troika countries has informed the Department of State that the national requirements for the entry into force of the Agreement have been fulfilled and which shall remain in force indefinitely, unless terminated by any Party upon six months' written notice to the other Parties.

Department of State

Washington, July 21, 1999

BlS

Translation

The Royal Netherlands Embassy presents its compliments to the Department of State and has the honor to refer to discussions between officials of the Governments of the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the Troika) and the Government of the United States of America (the four Governments hereinafter referred to as the Parties) concerning co-operation between the Troika and the Government of the United States of America on the application of non-proliferation assurances to low enriched uranium transferred from the Troika countries to the United States for fabrication into fuel and retransfer to Taiwan for use in Taiwan's light water nuclear reactor programs. Pursuant to these discussions, the Government of the Kingdom of the Netherlands proposes that the terms and conditions set forth in the Annex to this Note shall govern that co-operation.

The Government of the Kingdom of the Netherlands has the further honor to propose that this Note, including its Annex, and the Department of State's reply confirming that the foregoing is acceptable to the Government of the United States of America, together with the equivalent exchanges of Notes between the Governments of the Federal Republic of Germany and the Government of the United Kingdom on the one hand and the Government of the United States on the other, shall constitute an Agreement among the Parties, which shall enter into force on the first day of the second month following the date on which the last of the Troika countries has informed the Department of State of the United States of America, that the national requirements for the entry into force of the Agreement have been fulfilled, and which shall remain in force indefinitely, unless terminated by any Party upon six months' written notice to the other Parties.

The Royal Netherlands Embassy avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington D.C., July 21, 1999

[The English language translation of the Annex to the Netherlands Embassy's note is substantively identical to the text of the Annex to the U.K. note.]

The Department of State refers to the Royal Netherlands Embassy's Note dated July 21, 1999 concerning cooperation between the Governments of the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the Troika) and the Government of the United States of America (the four Governments hereinafter referred to as the Parties) concerning cooperation between the Troika and the Government of the United States of America on the application of non-proliferation assurances to low enriched uranium transferred from the Troika countries to the United States for fabrication into fuel and retransfer to Taiwan for use in Taiwan's light water nuclear reactor programs. The Government of the Kingdom of the Netherlands proposed that the terms and conditions set forth in the Annex to that Note shall govern that cooperation.

The Department of State confirms that the Government of the Kingdom of the Netherlands' proposal is acceptable to the Government of the United States

of America and that the Embassy's Note, including its Annex, and this reply, together with the equivalent exchanges of Notes between the Governments of the Federal Republic of Germany and the United Kingdom on the one hand and the Government of the United States of America on the other, shall constitute an Agreement among the Parties, which shall enter into force on the first day of the second month following the date on which the last of the Troika countries has informed the Department of State that the national requirements for the entry into force of the Agreement have been fulfilled and which shall remain in force indefinitely, unless terminated by any Party upon six months' written notice to the other Parties.

Department of State

Washington, July 21, 1999

7/21/99

Translation

*THE AMBASSADOR
OF THE
FEDERAL REPUBLIC OF GERMANY
WASHINGTON, D. C.*

Wiss 466.44

Dear Madam Secretary:

On behalf of the Government of the Federal Republic of Germany, I have the honour to refer to discussions between officials of the Governments of the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the Troika) and the Government of the United States of America (the four Governments hereinafter referred to as the Parties) concerning cooperation between the Troika and the Government of the United States of America on the application of non-proliferation assurances to low enriched uranium transferred from the Troika countries to the United States for fabrication into fuel and retransfer to Taiwan for use in Taiwan's light water nuclear reactor programmes. Pursuant to these discussions, the Government of the Federal Republic of Germany proposes that the terms and conditions set forth in the Annex to this Note shall govern that cooperation.

The Government of the Federal Republic of Germany has the further honour to propose that this Note, including its Annex, and the Department of State's reply confirming that the foregoing is acceptable to the Government of the United States of America, together with the equivalent exchanges of Notes between the Governments of the Kingdom of the Netherlands and the United Kingdom on the one hand and the Government of the United States of America on the other, shall constitute an Agreement among the Parties, which shall enter into force on the first day of the second month following the date on which the last of the Troika countries has informed the Department of State that the national requirements for the entry into force of the Agreement have been fulfilled and which shall remain in force indefinitely, unless terminated by any Party upon six months' written notice to the other Parties.

Accept, Madam Secretary, the assurances of my highest consideration.

Washington, 21 July 1999

The Honorable

Madeleine Albright

Secretary of State

The Department of State

Washington, D.C.

[The English language translation of the Annex to the German Ambassador's note is substantively identical to the text of the Annex to the U.K. note.]

The Department of State refers to the German Embassy's Note dated July 21, 1999 concerning cooperation between the Governments of the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the Troika) and the Government of the United States of America (the four Governments hereinafter referred to as the Parties) concerning cooperation between the Troika and the Government of the United States of America on the application of non-proliferation assurances to low enriched uranium transferred from the Troika countries to the United States for fabrication into fuel and retransfer to Taiwan for use in Taiwan's light water nuclear reactor programs. The Government of the Federal Republic of Germany proposed that the terms and conditions set forth in the Annex to that Note shall govern that cooperation.

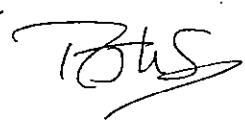
The Department of State confirms that the Government of the Federal Republic of Germany's proposal is acceptable to the Government of the United

States of America and that the Embassy's Note, including its Annex, and this reply, together with the equivalent exchanges of Notes between the Governments of the Kingdom of the Netherlands and the United Kingdom on the one hand and the Government of the United States of America on the other, shall constitute an

Agreement among the Parties, which shall enter into force on the first day of the second month following the date on which the last of the Troika countries has informed the Department of State that the national requirements for the entry into force of the Agreement have been fulfilled and which shall remain in force indefinitely, unless terminated by any Party upon six months' written notice to the other Parties.

Department of State

Washington, July 21, 1999

A handwritten signature in dark ink, appearing to be "BLS" with a stylized flourish underneath.

Side Letter

The Department of State refers to the Agreement of July 21, 1999 between the Governments of the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as "the Troika") and the Government of the United States of America (hereinafter referred to as "the U.S.") concerning cooperation between the Troika and the U.S. on the application of non-proliferation assurances to low enriched uranium transferred from the Troika countries to the United States for fabrication into fuel and retransfer to Taiwan for use in Taiwan's light water nuclear reactor programs.

Paragraph 11 of the Annex of that Agreement requires that the Troika shall ensure that all necessary steps are taken to require URENCO to share the costs of the U.S. implementing its right to apply fallback safeguards, in accordance with paragraph 9 of the Agreement, or the costs of the U.S. implementing its right of return, in accordance with paragraph 10 of the Agreement, as they apply to "Troika uranium" or

special nuclear material produced therefrom on a proportionate basis based on the relative value of the enrichment and fabrication components of the nuclear fuel supplied.

The Department of State would like to confirm that "a proportionate basis based on the relative value of the enrichment and fabrication components of the nuclear fuel supplied" means that URENCO will assume 70 percent of all costs incurred by the U.S. in its exercise of the enumerated rights, while the U.S. will assume 30 percent of all these costs. This allocation of costs is predicated on the basis that no other parties are contributing, directly or indirectly through URENCO, to the cost of U.S. exercise of the enumerated rights. Should, following negotiation, additional parties assume a share of the exercise of the enumerated rights, the U.S. will seek to agree with the Troika on a different allocation of costs between the U.S. and URENCO. Such additional parties would include, for example, those supplying the natural uranium feed material or the conversion services for material enriched by URENCO or the party supplying the conversion services for the enriched product from URENCO.

The Department of State would like to further confirm the understanding that the cost of the return of the nuclear fuel, whether irradiated or

unirradiated, would include any required compensation to Taiwan, transportation costs, storage costs, and disposal costs. These costs would be offset by any revenue that may be accrued from the sale of the fuel.

Department of State

Washington, July 21, 1999

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